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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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Mark C. Nicely

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EXAMINER

SAGER, MARK ALAN

ART UNIT

PAPER NUMBER

3714

NOTIFICATION DATE

DELIVERY MODE

10/02/2008

ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

PATENTS@BELLBOYD.COM

Office Action Summary	Application No. 10/668,670	Applicant(s) NICELY ET AL.	
	Examiner M. Sager	Art Unit 3714	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 15 July 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-18,20-23,25-27,29-54 and 56-65 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-18,20-23,25-27,29-54 and 56-65 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 1/14/08 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

Information Disclosure Statement

1. The Applicant states in remarks rec'd 7/15/08 that references were provided; however, no record of any subsequent IDS or any filed references is of record after IDS rec'd 1/22/08.

Claim Interpretation

2. The invention defined by claim language including 'a single player' and a 'first player' includes and fails to preclude multiple players at least due to open ended 'comprising'. Also, a 'single player' includes marital status that claims would thus be limited to non-married users although not so applied herein. Also, currently claims 7-8, 18, 20-23, 27, 31-37, 45-47 and 57-59 appear to require a plurality [first and second (or third)] of side wagers to be concurrent; however, cited claims fail to preclude wagers from multiple players at least since comprising a single player includes and fails to preclude multiple players or, stated differently a plurality of players includes a single player and present claim language includes tracking of a plurality of players that each make side wager(s) and does not limit to only a single player. In addition, claim language does not require first and second (or third) side wager being concurrent (except for cited claims above). The language 'independent... of any other player' requires no influence or interaction with another player for that associated wagering activity but does not preclude concurrent [streak] wagers by different players. The broadest reasonable interpretation of claimed method or apparatus is a counter or mechanism for counting/tracking or displaying status of consecutive events. In essence, the claims pertain to wagers with the recording and tracking progress of multiple wagers on outcomes.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

4. Claims 1-13, 15-18, 20-23, 25-27, 38-51, 53-54 and 56-65 are rejected under 35

U.S.C. 102(b) as being anticipated by Orenstein ('885 or '574). This holding is maintained for cited claims, as amended, including a 'single' player, from prior action that is incorporated herein with due consideration of amended language and broadest reasonable interpretation thereof. Response to Applicants assertion of patentability is provided below and incorporated herein. Claim interpretation stated above is incorporated herein.

5. Claims 1-4, 6-10, 12-13, 15-18, 20-23, 25-27, 31-33, 37-42, 44-48, 50-51, 53-54 and 56-65 are rejected under 35 U.S.C. 102(b) as being anticipated by Forte (5586766). This holding is maintained for cited claims, as amended, including a 'single' player, from prior action that is incorporated herein with due consideration of amended language and broadest reasonable interpretation thereof. Response to Applicants assertion of patentability is provided below and incorporated herein. Claim interpretation stated above is incorporated herein.

6. Claims 1-13, 15-18, 20-23, 25-27, 31-32, 34-35, 37-51, 53-54 and 56-65 are rejected under 35 U.S.C. 102(b) as being anticipated by Feinberg (5851010). This holding is maintained for cited claims, as amended, including a 'single' player, from prior action that is incorporated herein with due consideration of amended language and broadest reasonable interpretation

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thereof. Response to Applicants assertion of patentability is provided below and incorporated herein. Claim interpretation stated above is incorporated herein.

7. Claims 1-13, 15-18, 20-23, 25-27, 31-32, 37-51, 53-54 and 56-65 are rejected under 35 U.S.C. 102(e) as being anticipated by Orenstein (2001/0028147). Orenstein discloses a gaming system, apparatus, computer program storage device, and method for multiple play wagering teaching all claimed steps and features for a single player to place multiple simultaneous consecutive streak wagers that is tracked manually with lammers/chips on paths while at table game play or electronically when playing on a gaming machine (abstract, paragraphs 00012-0036, 0054, 0058, esp. 0018, 0020, 0032-0033, 0058, figs. 1-8) for any number of consecutive streak wagers placed on any round of play.

Claim Rejections - 35 USC § 103

8. Claims 14, 34-36 and 52 are rejected under 35 U.S.C. 103(a) as being unpatentable over Feinberg and Orenstein ('147). Feinberg and Orenstein each discloses invention including tracking consecutive [streak] events on a game table or by gaming machine that would be done electronically or electromechanically that each clearly depict a graphical image of progress, but does not particularly describe a graph, chart, bar graph and pie chart as claimed. Although the representation of progress of consecutive events taught by Feinberg or Orenstein is not a graph, chart, pie chart or bar graph, as claimed, the display taught by Feinberg and Orenstein each provides progress of consecutive events such as streak rounds of claimed invention in that the claimed graph, bar graph, chart and pie chart fails to patentably distinguish. A graph, bar graph, chart and pie chart provides an easy visual indication of state of progress and thus it would have

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been obvious to an artisan at a time prior to add a graph, bar graph, chart or pie chart to Feinberg and Orenstein so as to provide an easy visual indication of progress of streak round/wager.

9. Claims 32-33 are rejected under 35 U.S.C. 103(a) as being unpatentable over Orenstein ('147) in view of Forte. Orenstein discloses claimed steps/features (supra) but lacks arc. In an analogous tracking progress of side or proposition wager, Forte discloses a tracking progress of a side proposition wager along an arc for visual representation of the progress for consecutive rounds of play. Thus, it would have been obvious to an artisan at a time prior to the invention to apply the process of an arc as taught by Forte to improve the method, apparatus, and computer program storage device of Orenstein for the predictable result of a visual representation of progress of placed wagers.

Response to Arguments

10. Applicant's arguments filed 7/15/08 have been fully considered but they are not persuasive. For the record, the holding regarding anticipation by Orenstein '431 was dropped only since it was deemed duplicative of its tracking mechanism for wagering events to Orenstein '147 herein and thus was not dropped due to any amendment or remark presented by Applicant since as stated below, current claims, as amended, do not require multiple streak wagers to be placed by a single player. The request for removal of finality on page 23 is moot due to filing of RCE. The Office disagrees with Applicants characterization of previously claimed invention and references on pages 26-28 since Office maintains interpretation of then claimed invention being taught by references via evidence presented in final mailed 4/15/08; however, this issue is moot due to amendments to claims.

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In response to Applicants argument(s) regarding patentability, the examiner disagrees that present claimed invention is limited to *only* a single player placing multiple streak round wagers. Although the claims have been amended to claim a single player, as stated above, present claim language fails to preclude a single player placing multiple non-concurrent side wagers or multiple players each by happenstance placing a different side wager that are concurrent with one another as rendering claimed invention taught by cited art at least due to failing to require *only* a [single] player and failing to differentiate first and second (or third) side wagers as being simultaneous. Regarding Applicants remarks on pages 28-30, the Office agrees that claims include a form for [**only**, neither argued nor claimed] a single player to place multiple consecutive simultaneous wagers that is not taught by references [Orenstein ('431, '885, 574), Forte and Feinberg]. However, the presently amended claims do not require multiple wagers to be placed by a single player due to 'opportunity' and tracking the wagers in the alternative since if a player does not place a 'second' wager [either due to player choice or prohibition of the reference does not matter since result is same], the method, apparatus, computer program storage device is tracking a player placing a single wager for a number of rounds that is clearly taught by each references and by Applicants remarks, is admitted that each does perform this claimed form. The Office further maintains that the present invention as defined by amended claims continues to permit a plurality of players and thus from teachings of any of Orenstein ('885, '574), Forte and Feinberg, a plurality of players, by happenstance, each place consecutive streak wagers on different game events that is tracked for their respective progress continues to meet claims for including and not precluding a plurality of players. As example only, in a table game, player A places a consecutive wager in roulette for 5 rounds on red; while either same round or

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at a later round but before the consummation of player A wager, player B places a consecutive streak wager for 3 rounds on even. This meets the present claims as taught by the references for a player A placing a consecutive streak wager while a player B placing a different consecutive streak wager that is simultaneous with player A consecutive streak wager and is tracked simultaneously thereto in accordance with the teachings of each of the applied references.

In addition, as a matter of tracking wagers placed and thereby falling within the boundary of present claims, the Office inquires as to how does Applicant categorize multiple players on one player club account such as husband and wife sharing a single player club account (see *Packes*, 6319122 @ 6:39-51). Now, same scenario as above, but player A and B are each on same player club account playing at same game table that by happenstance occurs. This is due in part why Office maintains there presently is no differentiation to define only one player separate and unique from any other player, as claimed, and disclosed. The present amended language of 'independent of any input/wager from any other player' merely defines that no other player assists in placing that particular wager, if it is placed by first player, but does not require that first player actually places that wager or any other wager.

11. Applicant's arguments with respect to claims 1-18, 20-23, 25-27, 29-54, 56-65 have been considered but are moot in view of the new ground(s) of rejection. However, with due consideration of claimed invention, since *Orenstein '147* teaches a single player placing multiple simultaneous consecutive streak wagers on different game events (either number of rounds or different game facets such as even and black as different events in roulette) at any time during play, the only difference between claimed invention and *Orenstein '147* lies in the form of presentation of progress that is design choice to inform player of progress on their wager in so

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far as the present claimed arc, graph, bar graph, chart and pie chart fail to critically distinguish over Orenstein for presenting progress of wager to player.

Conclusion

12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to M. Sager whose telephone number is 571-272-4454. The examiner can normally be reached on T-F, 0700-1730 hours.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Xuan Thai can be reached on 571-272-7147. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/M. Sager/
Primary Examiner, Art Unit 3714